

Testimony of Dan Jacobson
On behalf of the North Dakota Water Resource Districts Association
In opposition of Senate Bill 2208
January 28, 2021

Chairman Luick and members of the Senate Agriculture Committee:

My name is Dan Jacobson, and I serve as Chairman for the ND Water Resource Districts Association; I serve as Chairman for the SE Cass County Water Resource District; I serve as Chairman of the Cass County Joint Board; and I serve on the Board of Directors for the Red River Joint Board.

Upon information and belief, this bill was intended to merge the assessment process found in N.D.C.C. § 61-21 (which deals only with assessment drains) into N.D.C.C. § 61-16.1 (which deals with all water resource district assessment projects, including assessment drains), since both chapters provide authority for raising funds and levying the costs of construction and ongoing maintenance for assessment drains, and since inconsistencies exist in those two chapters. In addition, my understanding is that this bill was intended to protect landowners from receiving assessments that exceed benefits derived from water resource projects, in response to controversy relating to Drain 11 in Sargent County. I will highlight some of the impacts this bill will have if it is passed:

- **Snagging and Clearing.** S.B. 2208 repeals N.D.C.C. § 61-16.1-09.1, which provides water resource districts and county commissions with the ability to quickly assess up to \$100,000, not to exceed \$.50/acre for agriculture land, by a two-third vote of the county commission and water resource district. This process was enacted in 2001 with the help of Senator Tom Fischer to provide an inexpensive and condensed process for removing debris when that debris urgently threatens public infrastructure and private property. Without N.D.C.C. § 61-16.1-09.1, water resource districts would have to use general funds or a full-blown assessment vote under N.D.C.C. § 61-16.1-21 (a lengthy, expensive

process) to remove snags in river segments that are on the brink of causing flood damages.

- **Improvements and Maintenance for Assessment Drains.** Currently, the law allows water resource districts to use its annual levy authorized under N.D.C.C. § 61-16.1-45 or N.D.C.C. § 61-21-46 to provide maintenance and improvements to existing assessment drains, unless the cost of the project would exceed the total amount that may be levied by the water resource district in any six-year period. S.B. 2208 restricts maintenance to only those activities that repair or bring a structure back to its original design, and specifically excludes widening or deepening the channel with the result of increasing flow capacity of the drain. In addition, S.B. 2208 precludes a water resource district from using its annual levy for anything other than the new definition of maintenance. In other words, if you have a 50-year-old drain and a 24" culvert washes out, and a 48" culvert is required to meet current Stream Crossing Standards, a water resource district would need to conduct a full assessment vote. Similarly, if a drain with a 3:1 side slope is experiencing slope failures due to erosion or other instability, and current design standards require flattening the side slopes to a 4:1 or 5:1 slope to achieve an acceptable factor of safety and other environmental benefits, the water resource district would need to conduct a full assessment vote.
- **Subsurface Water Management Permitting.** Currently, subsurface water management systems less than 80 acres in footprint are not required to obtain a permit. S.B. 2208 requires all subsurface water management systems to obtain a permit, regardless of size.
- **Drain Permit Complaints.** Currently, N.D.C.C. § 61-32-07 and § 61-32-08 provide a process for any person to file a complaint against a landowner who illegally constructs a surface or subsurface drain, which will be considered by the water resource district. Any aggrieved party may appeal the local water resource district's decision to the state engineer. S.B. 2208 repeals this complaint and appeal process.
- **Petition Required to Finance Assessment Drains.** Currently, a water resource district has the authority to finance and assess the costs of construction of a project on its own motion or upon landowner request. S.B. 2208 would add N.D.C.C. § 61-16.1-15(2), which requires a written petition from at least six landowners or a majority of landowners in the assessment district if a majority of the landowners in the assessment district is fewer than six.

In summary, S.B. 2208 has significant, detrimental impacts on the ability of water resource districts to manage water efficiently to protect infrastructure and private property. Water management is often controversial, as upstream and downstream interests are often at odds with each other. S.B. 2208 does not change how water resource districts administer new projects or determine benefits. In other words, S.B. 2208 will not relieve the controversial nature of water management other than making water management projects more difficult and administratively burdensome to finance and construct and maintain. Please vote do not pass.